

RICK WEAVER  
Name

8855258  
Prisoner Identification Number

T. R. C. I.  
Place of Confinement

82911 Beach Access Rd  
Address UMCWILLA, OR 97882

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

Richard F. Weaver, JR  
PETITIONER,

v.

Civil Case No. 2:16 cv 2226 - SB

Brighte AMSberry

PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2254

TWO RIVERS CORRECTIONAL INST  
(Name of Warden, Superintendent, Jailor,  
Parole or Probation Supervisor, or authorized  
person having custody of petitioner.)  
RESPONDENT(S).

CONVICTION UNDER ATTACK

1. Name and location of court which entered the judgment of conviction under attack:

MACON COUNTY - SALEM

2. Criminal docket or case number (if you know): 10C42882 /

3. Date of judgment of conviction: 10/24/2011

4. Length of sentence: 25 years

5. Nature of offense involved (all counts):

Aggravated Attempted murder  
Rob I  
Rob I

6. What was your plea? (Check one)

☐ Not Guilty

☒ Guilty

☐ Nolo Contendere

☐ Insanity plea

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

7. If you pleaded not guilty, what kind of trial did you have? (Check One)

☐ Jury

☒ Judge Only

8. Did you testify at trial?

☐ Yes

☒ No

**EXHAUSTION OF STATE REMEDIES**

**DIRECT APPEAL**

9. Did you directly appeal from the judgment of conviction?

☒ Yes

☐ No

10. If you did appeal, answer the following:

a. Name of court: mcgraw?

b. Docket or case number (if you know): \_\_\_\_\_

c. Result: Denied ?

d. Date of result and citation, if known: \_\_\_\_\_

e. Grounds raised: 1  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Did you seek further review of the decision on appeal by a higher state court?

~~Yes~~

☒ No

a. Name of court: \_\_\_\_\_

b. Docket or case number (if you know): \_\_\_\_\_

c. Result: \_\_\_\_\_

d. Date of result and citation, if known: \_\_\_\_\_

e. Grounds raised:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes

☒ No

a. Result: \_\_\_\_\_

b. Docket or case number (if known): \_\_\_\_\_

c. Date of result and citation, if known: \_\_\_\_\_

d. Grounds raised:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. If you did not directly appeal from the judgment of conviction, explain briefly why you did not:

I had no idea I could & was not advised by  
 lawyer, when I've filed a claim against him  
 with the Oregon State Bar the attorney was  
 Mark Oberg, Salem Oregon and has a long, long  
 discipline record and I have a claim against

#### POST-CONVICTION RELIEF

14. Did you file a petition for state post-conviction relief or state petition for writ of habeas corpus?

☒ Yes

☐ No

a. Name of court: MAHUR COUNTY

b. Docket or case number (if known): 12119750 P

c. Nature of proceeding: Post-conviction

d. Did you receive an evidentiary hearing?

☐ Yes

☐ No

? Don't know

e. Result: \_\_\_\_\_

f. Date of result and citation or case number, if known: \_\_\_\_\_

g. Grounds raised:

INeffective ASSISTANT OF COUNCIL  
6th & 14th Amendment VIOLATIONS

15. Did you appeal the result of your state post-conviction or state habeas corpus proceeding?

☒ Yes

☐ No

a. Name of court: Oregon Court of Appeals

b. Docket or case number, if known: A 157348

c. Result: Denied w/o opinion

- d. Date of result and citation, if known: 1/27/16
- e. Grounds raised:  
ineffective of assistance &  
judge decision was decided using wrong color  
of law

16. Did you seek further review of the decision on appeal by a higher state court?

☒ Yes

☐ No

- a. Name of court: Supreme court of Oregon
- b. Docket or case number, if known: A157348 / SO 63963
- c. Result: Denied Review
- d. Date of result and citation, if known: 6/16/2014
- e. Grounds raised:  
ineffective assistant of counsel  
PLC judge used wrong color of law to decide P/C

17. If you did not appeal from the adverse decision in your state post-conviction or state habeas corpus proceeding, explain briefly why you did not:

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#### GROUND FOR RELIEF

18. For this petition, state *concisely* every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize *briefly* the facts supporting each ground. Attach additional pages if you have more than four grounds.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust (use up) your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may

- a. Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- b. Conviction obtained by use of coerced confession.
- c. Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- d. Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- e. Conviction obtained by a violation of the privilege against self-incrimination.
- f. Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- g. Conviction obtained by a violation of the protection against double jeopardy.
- h. Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impeached.
- i. Denial of effective assistance of counsel.
- j. Denial of right of appeal.

A - conviction obtained by plea of guilty which was ~~not~~ <sup>not</sup> made voluntarily w/ understanding of the nature of the charge & the consequences

trial Atty. lied to me. Trial Atty. was fired by me and refused to withdraw. I wrote the judge saying he was fired - trial Atty. did not inform me of my consequences of the plea in appeal rights since he fired him - This conviction is mute - should be thrown out since I technically fired him and was not granted another Atty.

Ground Two: Ineffective Assistance of Counsel under 6th & 14th Amendments  
as well as 8th. Atty Susan Gerber filed 10 exhibits  
which were not allowed - e.g.

Refused to meet w/ DR who said I had diminished  
 CAPACITY. Refused 62 more calls - have records -  
 Lied about contacting DR - and in fact applied  
 for funding for him to testify 1- day after conviction  
 told & convinced my mother to sign plea bargain  
 never told me my best possible chance nor informed  
 me of APPEAL RIGHTS - Refused to be removed  
 from case when fired - Refused my direct  
 Requests to the court - Failed to inform me of  
 my rights to where I fully understood

Failed to  
up to Z  
Exhibit hearings  
to defend  
my crucial  
Exhibits?

told me my decree wasn't  
 coming because the cl.A. & Judge  
 didn't want to hear my diminished capacity plea  
 neither signed Adv. activate Statute + trial Att'y/  
 Pressured her to make me sign plea



## C. Ground Three:

coerced confession - confessions must be knowingly  
intelligently & voluntarily made

Supporting FACTS (state briefly without citing cases or law):

was high church confession - not mentally capable  
was in fact sent to cell for evaluation since  
I was found a couple months later unfit  
for trial - was conned a meeting w/ my  
girlfriend who called police on me & to smoke and  
talk w/ her if I signed confession - was in  
a very dangerous co-dependent relationship -  
was told police before interview I want a  
lawyer - still interviewed me

## D. Ground Four:

Right to speedy trial

Supporting FACTS (state briefly without citing cases or law):

court claimed 60 day fast & speedy - I never  
signed a waiver of my fast & speedy

~~REDACTED~~

### OTHER INFORMATION

19. Please answer these additional questions about the petition you are filing:

- a. Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?

☒ Yes

☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

because I had an P/L attorney Susan Geiber  
whom would not listen to me and include  
more grounds for my P/L trial and she has  
been since disbarred and my appeal atty  
Jed Petersen said he wouldn't add anything -  
that I had to do federal appeal - I also  
had over 10 exhibits that were denied a P/L because  
ms geiber failed to admit them - I don't even know  
what they are - and did not have any trial paperwork  
as the prison lost my trial  
work and I had nothing to use at P/L  
trial and I told Susan, she said "I got it, don't  
worry about it, yet I was at a less-whole  
trial - Mr Petersen said I can only bring that  
stuff up at federal appeal - she also has been  
disbarred. I want to add ineffective assistance of  
council on her as well

- b. Is there any ground in this petition that has not been presented in some state or federal court? If so, identify which ground or grounds have not been presented, and state your reasons for not presenting them:

YES - COERCED CONFESSION, FASTER SPEEDS, FIRED MY ATTORNEY  
FORCED COUNCIL, FORCED PLEA

I WAS TOLD BY MY P/L SUSAN GERBER TO  
BRING THESE UP AT FEDERAL APPEAL

20. Do you have any petition or appeal now pending (filed and not decided yet) in any court, state or federal, for the judgment you are challenging here?

☐ Yes

☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

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21. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- a. At preliminary hearing:

SCOTT HOWELL

- b. At arraignment and plea:

SCOTT HOWELL

- c. At trial:

MARK CHERT

- d. At sentencing:

MARK CHERT

- e. On appeal:

MARK CHERT

- f. In any post-conviction proceeding:

SUSAN GERBER



g. On appeal from any adverse ruling in a post-conviction proceeding:

Jed Peterson

22. Is this the first *federal* petition for writ of habeas corpus challenging this conviction?

☒ Yes

☐ No

a. If no, in what court was the prior action filed? \_\_\_\_\_

b. What was the prior case number? \_\_\_\_\_

c. Was the prior action: ☐ Decided on the merits, or

☐ Dismissed on procedural grounds

d. Date of decision: \_\_\_\_\_

e. Are there any issues in this petition raised in the prior petition?

☐ Yes

☐ No

f. If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this successive petition?

☐ Yes\*\*

☐ No

\*\*If the answer is "yes," you *must* attach a copy of the order received from the Ninth Circuit Court of Appeals.

23. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes

☒ No

a. If so, give the name and location of the court which imposed the sentence to be served in the future: \_\_\_\_\_

b. Give the date and length of sentence to be served in the future: \_\_\_\_\_

c. Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes

☐ No

24. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition:

I WAS TOLD I'M WITHIN 1 YEAR SINCE MY SUPREME  
COURT APPEAL WAS DENIED IN JUNE 2016 - I HAVE  
1 YEAR TO FILE FEDERAL APPEAL FROM THAT DATE, TOLD BY  
TED PETERSEN

25. Date you are mailing (or handing to correctional officer for mailing) this petition to the court:

11/18/16

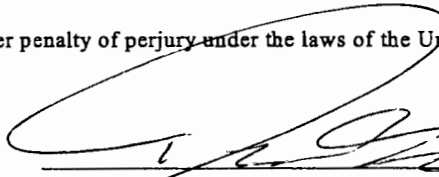
**WHEREFORE**, petitioner prays that the court will grant such relief to which he or she may be entitled in this federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in a state custody.

\_\_\_\_\_  
Signature of Attorney (if any)

**DECLARATION UNDER PENALTY OF PERJURY**

I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

11/16/16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature of Petitioner